IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4516 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

JINENDRA @ RINKU KAPURCHAND JAIN
Versus
COLLECTOR & DISTRICT MAGISTRATE AND OTHERS

==========

Appearance :
MR NM KAPADIA for the Petitioner

MR ND GOHIL, AGP for respondent No.1, 2 and 4
MR M.IQBAL A SHAIKH for Respondent No.3

==========

CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 23/06/2006

ORAL JUDGMENT

This petition is fileed by the brother of the detenu who has challenged the order of detention passed against detenu – Jinendra @

Rinku Kapurchand Jain under the provisions of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 ("PBM Act" for short).

By an order dated 18-2-2006, the detenu is detained under provisions of the aforesaid Act. With the detention order, the detenu is also served with the ground of detention. In the grounds of detention, it is alleged that the detenu is engaged in illegal selling like kerosene and solvent and getting unauthorised government public distribution systems blue kerosene and mixing in petroleum liquid. The detaining authority after being subjectively satisfied, detained the detenu by passing detention order under Sub-section (2) of Section (3) of the PBM Act.

Mr Kapadia, learned advocate for the petitioner submitted that there is a delay in deciding the representation of the petitioner at the hand of the Central Government. He submitted that the detenu has made a representation through his advocate on 3rd March, 2006, which was sent to the District Magistrate and the District Magistrate forwarded it to the Central Government and the same was received by the Central Government on 6th March 2006 and the same was rejected on 14th March, 2006. Therefore, there is a delay in deciding representation of the petitioner. He further submitted that on this ground, the order of detention passed against the petitioner-detenu is required to be quashed. In support of his say, Mr Kapadia has relied upon the decision of the Supreme Court in **Rajammal Vs. State of Tamil Nadu and Another,** reported in **AIR 1999 SC 684**, wherein it is held as under in paragraphs 9 and 10 :

> "9. The position, therefore, now is that if delay was caused on account of any indifference or lapse in considering the

representation such delay will adversely affect further detention of the prisoner. In other words, it is for the authority concerned to explain the delay, if any, in disposing the representation. It is not enough to say that the delay was short. Even longer delay can as well be explained. So the test is not the duration or range of delay, but how it is explained by the authority concerned.

10. What happened in this case was that the Government which received remarks from different authority submitted the relevant files before the Under Secretary for processing it on the next day. The Under Secretary forwarded it to the Deputy Secretary on the next working day. Thus there is some explanation for the delay till 9-2-1998. Thereafter the file was submitted before the Minister who received it while he was on tour. The Minister passed the order only on 14-2-1998. Though there is explanation for the delay till 9-2-1998, we are unable to find out any explanation whatsoever as for the delay which occurred thereafter. Merely stating that the Minister was on tour and hence he could pass orders only on 14-2-1998 is not a justifiable explanation, when the liberty of a citizen guaranteed under Article 21 of the Constitution is involved. Absence of the Minister at the Headquarters is not sufficient to justify the delay, since the file could be reached the Minister with utmost promptitude in cases involving the vitally important fundamental right of a citizen."

It is not in dispute that the Central Government received the representation of the petitioner on 6th March, 2006, as Mr.M.Iqbal Shaikh, learned Counsel appearing for the Central Government has accepted the said aspect. However, ultimately, the representation of the petitioner was decided on 14th March, 2006. Therefore, there is a delay of about 5 days in deciding the representation of the petitioner.

There is no satisfactory explanation coming forward with regard to five days' delay in deciding the representation of the detenu. Therefore, there is a delay in deciding the representation of the petitioner and since, it is not satisfactorily explained, this petition is required to be allowed and the order of detention is required to be quashed.

Considering the aforesaid aspect of the matter, this petition is allowed. The impugned order of detention dated 18.02.2006 passed by the District Magistrate, Ahmedabad is set aside. The detenu – Jinendra @ Rinku Kapurchand Jain is ordered to be set at liberty forthwith if he is not required in any other case. Rule is made absolute accordingly. Direct Service is permitted.

(P.B.MAJMUDAR, J.)

*mohd